

APPENDIX ROW

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APPENDIX RIGHTS-OF-WAY, CONDUITS AND POLES (ROW)**1. INTRODUCTION**

- 1.1 This Appendix sets forth the terms and conditions for Rights of Way (ROW), Conduits and Poles provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, **SBC-AMERITECH** is an ILEC doing business in Indiana, Illinois, Michigan, Ohio and Wisconsin.
- 1.4 The prices at which **SBC-AMERITECH** agrees to provide CLEC with ROW are contained in the applicable Appendix Pricing and/or the applicable Commission ordered tariff where stated.

2. STRUCTURE AVAILABILITY

- 2.1 **SBC-AMERITECH** shall make available, to the extent it may lawfully do so, access to poles, ducts, conduits and Rights-of-way along **SBC-AMERITECH**'s distribution network that are owned or controlled by **SBC-AMERITECH** (individually and collectively, "Structure") for the placement of CLEC's wires, cables and related facilities (individually and collectively, "Attachments").
 - 2.1.1 "Rights-of-way" means (i) a legal interest of **SBC-AMERITECH** in property of others, such as an easement or license, suitable for use for communications distribution facilities or (ii) **SBC-AMERITECH**'s owned or leased property if such property is used for communications distribution facilities; provided, however, it does not generally include controlled environment vaults, remote equipment buildings, huts or enclosures, cross-connect cabinets, panels and boxes, equipment closets or enclosures in buildings or any like or similar equipment enclosures or locations, or the ducts or conduit connecting any of the foregoing to manholes or conduit runs between manholes.

2.1.2 The availability of **SBC-AMERITECH** Structure for CLEC's Attachments is subject to and dependent upon all rights, privileges, franchises or authorities granted by governmental entities with jurisdiction, existing and future agreements with other persons not inconsistent with Section 15, all interests in property granted by persons or entities public or private, and Applicable Law, and all terms, conditions and limitations of any or all of the foregoing, by which **SBC-AMERITECH** owns and controls Structure or interests therein.

2.2 **SBC-AMERITECH** will not make Structure available:

2.2.1 Where, after taking all reasonable steps to accommodate such request, there is Insufficient Capacity to accommodate the requested Attachment, or

2.2.2 An Attachment cannot be accommodated based upon nondiscriminatorily applied safety, reliability or engineering principles.

2.2.3 For purposes of this Appendix, "Insufficient Capacity" means the lack of existing available space on or in Structure and the inability to create the necessary space by taking all reasonable steps to do so. Before denying a request for access based upon Insufficient Capacity, **SBC-AMERITECH** will, in good faith explore potential accommodations with CLEC. If **SBC-AMERITECH** denies a request by CLEC for access to its structure for Insufficient Capacity, safety, reliability or engineering reasons, **SBC-AMERITECH** will provide CLEC a detailed, written reason for such denial as soon as practicable but, in any event, within forty-five (45) days of the date of such request.

2.3 **Franchises, Permits and Consents**

2.3.1 CLEC shall be solely responsible to secure any necessary franchises, permits or consents from federal, state, county or municipal authorities and from the owners of private property, to construct and operate its Attachments at the location of the **SBC-AMERITECH** Structure it uses. CLEC shall indemnify **SBC-AMERITECH** against loss directly resulting from any actual lack of CLEC's lawful authority to occupy such Rights-of-way and construct its Attachments therein.

2.4 Access and Modifications

- 2.4.1 Where necessary to accommodate a request for access of CLEC, and provided **SBC-AMERITECH** has not denied access as described in Section 2, or because **SBC-AMERITECH** will, as set forth below, modify its Structure in order to accommodate the Attachments of CLEC. Upon request, **SBC-AMERITECH** may permit CLEC to conduct Field Survey Work and Make Ready Work itself or through **SBC-AMERITECH**-approved contractors in circumstances where **SBC-AMERITECH** is unable to complete such work in a reasonable time frame. (For purposes of this Agreement, a “modification” shall mean any action that either adds future capacity to, or increases the existing capacity of, a given facility. By way of example, adding a bracket to a pole that is immediately utilized or adding innerduct to an existing duct does not qualify as a “modification,” while adding taller poles, adding new ducts between existing manholes and rebuilding manholes to accommodate additional cables would qualify as a “modification.”)
- 2.5 Before commencing the work necessary to provide such additional capacity, **SBC-AMERITECH** will notify all other parties having Attachments on or in the Structure of the proposed modification to the Structure. Where possible, **SBC-AMERITECH** shall include in a modification to accommodate CLEC’s Attachment(s) those modifications required to accommodate other attaching parties, including **SBC-AMERITECH**, that desire to modify their Attachments.
- 2.6 If CLEC request access to an **SBC-AMERITECH** Right-of-way where **SBC-AMERITECH** has no existing Structure, **SBC-AMERITECH** shall not be required to construct new poles, conduits or ducts, or to bury cable for CLEC but will be required to make the Right-of-way available to CLEC to construct its own poles, conduits or ducts or to bury its own cable; provided, however, if **SBC-AMERITECH** desires to extend its own Attachments, **SBC-AMERITECH** will construct Structure to accommodate CLEC’s Attachments.
- 2.7 The costs of modifying a Structure to accommodate CLEC’s request, an existing or prospective attaching party’s request, or the needs of **SBC-AMERITECH**, shall be borne by the party requesting such modification, except that if other parties obtain access to the Structure as a result of the modification, such parties shall share in the cost of such modification proportionately with the party initiating the modification. A party, including **SBC-AMERITECH**, with a pre-existing Attachment to the Structure to be modified to accommodate CLEC shall be deemed to directly benefit from the modification if, after receiving notification of the

modification, it adds to or modifies its Attachment. If a party, including SBC-AMERITECH, uses the modification to bring its Structure or Attachment into compliance with applicable safety or other requirements, it shall be considered as sharing in the modification and shall share the costs of the modification attributable to its upgrade. Notwithstanding the foregoing, an attaching party, including SBC-AMERITECH, with a pre-existing Attachment to the Structure shall not be required to bear any of the costs of rearranging or replacing its Attachment if such rearrangement or replacement is necessitated solely as a result of an additional Attachment or the modification of an existing Attachment sought by another attaching party, including CLEC. If an attaching party, including SBC-AMERITECH, makes an Attachment to the Structure after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered the added attachment possible.

- 2.8 All modifications to SBC-AMERITECH's Structure will be owned by SBC-AMERITECH. CLEC and other parties, including SBC-AMERITECH, who contributed to the cost of a modification, may recover their proportionate share of the depreciated value of such modifications from parties subsequently seeking Attachment to the modified structure.

3. **INSTALLATION AND MAINTENANCE RESPONSIBILITIES**

- 3.1 CLEC shall, at its own expense, install and maintain its Attachments in a safe condition and in thorough repair so as not to conflict with the use of the Structure by SBC-AMERITECH or by other attaching parties. Work performed by CLEC on, in or about SBC-AMERITECH's Structures shall be performed by properly trained, competent workmen skilled in the trade. SBC-AMERITECH will specify the location on the Structure where CLEC's Attachment shall be placed, which location shall be designated in a nondiscriminatory manner. CLEC shall construct each Attachment in conformance with the permit issued by SBC-AMERITECH for such Attachment. Other than routine maintenance and service wire Attachments, CLEC shall not modify, supplement or rearrange any Attachment without first obtaining a permit therefore. CLEC shall provide SBC-AMERITECH with notice before entering any Structure for construction or maintenance purposes.

3.2 Installation and Maintenance Standards

- 3.2.1 CLEC's Attachments shall be installed and maintained in accordance with the rules, requirements and specifications of the National Electrical Code, National Electrical Safety Code,

Telcordia Construction Practices, the FCC, the Commission, the Occupational Safety & Health Act and the valid and lawful rules, requirements and specifications of any other governing authority having jurisdiction over the subject matter.

4. IMPLEMENTATION TEAM

- 4.1 The Implementation Team shall develop cooperative procedures for implementing the terms of this Appendix and to set out such procedures in the Implementation Plan.

5. ACCESS REQUESTS

- 5.1 Any request by CLEC for access to SBC-AMERITECH's Structure shall be in writing and submitted to SBC-AMERITECH's Structure Access Center. SBC-AMERITECH may prescribe a reasonable process for orderly administration of such requests. Each CLEC's Attachment to SBC-AMERITECH's Structure shall be pursuant to a permit issued by SBC-AMERITECH for each request for access. The Structure Access Coordinator shall be responsible for processing requests for access to SBC-AMERITECH's Structure, administration of the process of delivery of access to SBC-AMERITECH's Structure and for all other matters relating to access to SBC-AMERITECH's Structure. CLEC shall provide SBC-AMERITECH with notice before entering any SBC-AMERITECH Structure.

6. UNUSED SPACE

- 6.1 Except for maintenance ducts as provided in Section 7 and ducts required to be reserved for use by municipalities, all useable but unused space on Structure owned and controlled by SBC-AMERITECH shall be available for the Attachments of CLEC, SBC-AMERITECH or other providers of Telecommunications Services, cable television systems and other persons that are permitted by Applicable Law to attach. CLEC may not reserve space on SBC-AMERITECH Structure for its future needs. SBC-AMERITECH shall not reserve space on SBC-AMERITECH Structure for the future need of SBC-AMERITECH nor permit any other person to reserve such space. Notwithstanding the foregoing, CLEC may provide SBC-AMERITECH with a two (2)-year rolling forecast of its growth requirements for Structure that will be reviewed jointly on an annual basis.

7. MAINTENANCE DUCTS

- 7.1 If currently available, one duct and one inner-duct in each conduit section shall be kept vacant as maintenance ducts. If not currently available and additional ducts are added, maintenance ducts will be established as part of the modification. Maintenance ducts shall be made available to CLEC for maintenance purposes if it has a corresponding Attachment. CLEC utilizing a maintenance spare must vacate it within sixty (60) days or provide an equivalent spare.

8. APPLICABILITY

- 8.1 The provisions of this Appendix shall apply to all SBC-AMERITECH Structure now occupied by CLEC.

9. OTHER ARRANGEMENTS

- 9.1 CLEC's use of SBC-AMERITECH Structure is subject to any valid, lawful and nondiscriminatory arrangements SBC-AMERITECH may now or hereafter have with others pertaining to the Structure.

9.2 Cost of Certain Modifications

- 9.2.1 If SBC-AMERITECH is required by a governmental entity, court or Commission to move, replace or change the location, alignment or grade of its conduits or poles, each Party shall bear its own expenses of relocating its own equipment and facilities. If a move of CLEC's Attachment is required by SBC-AMERITECH or another attaching party, CLEC shall move its Attachment, at the expense of the party requesting such move, within thirty (30) days after notification of the required move. If CLEC fails to move its Attachment within the foregoing period, CLEC authorizes SBC-AMERITECH to move such Attachment at CLEC's expense.

10. MAPS AND RECORDS

- 10.1 SBC-AMERITECH will provide CLEC, at CLEC's request and expense, with access to maps, records and additional information relating to its Structure within the time frame agreed upon by the Implementation Team; provided that SBC-AMERITECH may redact any Proprietary Information (of SBC-AMERITECH or third parties) contained or reflected in any such maps, records or additional information before providing access to such information to CLEC. SBC-AMERITECH does not warrant the accuracy or completeness of information on any maps or records. Maps, records and additional information are provided solely for

the use by CLEC and such materials may not be resold, licensed or distributed to any other person.

11. OCCUPANCY PERMIT

11.1 CLEC occupancy of Structure shall be pursuant to a permit issued by **SBC-AMERITECH** for each requested Attachment. Any such permit shall terminate:

11.1.1 If CLEC's franchise, consent or other authorization from federal, state, county or municipal entities or private property owners is terminated,

11.1.2 If CLEC has not placed and put into service its Attachments within one hundred eighty (180) days from the date **SBC-AMERITECH** has notified CLEC that such Structure is available for CLEC's Attachments,

11.1.3 If CLEC ceases to use such Attachments for any period of one hundred eighty (180) consecutive days,

11.1.4 If CLEC fails to comply with a material term or condition of this Appendix and does not correct such noncompliance within sixty (60) days after receipt of notice thereof from **SBC-AMERITECH** or

11.2 If **SBC-AMERITECH** ceases to have the right or authority to maintain its Structure, or any part thereof, to which CLEC has Attachments. If **SBC-AMERITECH** ceases to have the right or authority to maintain its Structure, or any part thereof, to which CLEC has Attachments, **SBC-AMERITECH** shall:

11.2.1 Provide CLEC notice within ten (10) Business Days after **SBC-AMERITECH** has knowledge of such fact and

11.3 **SBC-AMERITECH** will provide CLEC with at least sixty (60) days written notice prior to:

11.3.1 Terminating a permit for an Attachment, terminating service to a CLEC Attachment, or removal of an Attachment in each case for a breach of the provisions of this Appendix,

11.3.2 Any increase in the rates for Attachments to **SBC-AMERITECH**'s Structure permitted by the terms of this Appendix, or

- 11.3.3 Any modification to **SBC-AMERITECH**'s Structure to which CLEC has an Attachment, other than a modification associated with routine maintenance or as a result of an emergency.
- 11.4 If CLEC surrenders its permit for any reason (including forfeiture under the terms of this Appendix), but fails to remove it's Attachments from the Structure within one hundred eighty (180) days after the event requiring CLEC to so surrender such permit, **SBC-AMERITECH** shall remove CLEC's Attachments at CLEC's expense.
- 11.5 If **SBC-AMERITECH** discovers that CLEC has placed an Attachment on **SBC-AMERITECH**'s Structure without a valid permit, **SBC-AMERITECH** shall notify CLEC of the existence of such unauthorized Attachment and CLEC shall pay to **SBC-AMERITECH** within ten (10) Business Days after receipt of such notice an unauthorized Attachment fee equal to five (5) times the annual attachment fee for an authorized Attachment.
- 11.6 Within the foregoing period, CLEC shall also apply for an Occupancy Permit for the unauthorized Attachment.
- 11.7 In addition, CLEC shall go through the process of any Make Ready Work that may be required for the unauthorized Attachment.
- 11.8 If CLEC fails to pay the unauthorized Attachment fee or apply for the required Occupancy Permit within the foregoing period, **SBC-AMERITECH** shall have the right to remove such unauthorized Attachment from **SBC-AMERITECH**'s Structure at CLEC's expense.

12. INSPECTIONS

- 12.1 **SBC-AMERITECH** may make periodic inspections of any part of the Attachments of CLEC located on **SBC-AMERITECH** Structure. CLEC shall reimburse **SBC-AMERITECH** for the costs (as defined in Section 252 (d) of the Act) of such inspections. Where reasonably practicable to do so, **SBC-AMERITECH** shall provide prior written notice to CLEC of such inspections.

13. DAMAGE TO ATTACHMENTS

- 13.1 Both CLEC and **SBC-AMERITECH** will exercise precautions to avoid damaging the Attachments of the other or to any **SBC-AMERITECH** Structure to which CLEC obtains access hereunder. The Party damaging the Attachments of the other Party shall be responsible to such other Party therefore.

14. CHARGES

- 14.1 SBC-AMERITECH's charges for Structure provided hereunder shall be determined in compliance with the regulations to be established by the FCC pursuant to Section 224 of the Act. Prior to the establishment of such rates, the initial charges applicable to Structure hereunder shall be as set forth in the Appendix Pricing. SBC-AMERITECH reserves the right to adjust the charges for Structure provided hereunder consistent with the foregoing. Notwithstanding the foregoing, SBC-AMERITECH reserves the right to price on a case-by-case basis any extraordinary Attachment to Structure. An "Extraordinary Attachment" is any Attachment to Structure that is not typical of Attachments commonly made to Structure and that impacts the usability of the Structure in excess of a typical Attachment or that presents greater than typical engineering, reliability or safety concerns to other attaching parties or users of the Structure. Full payment in advance shall be required from CLEC for map preparation, field surveys and Make-Ready Work.

15. NONDISCRIMINATION

- 15.1 Except as otherwise permitted by Applicable Law, access to SBC-AMERITECH-owned or controlled Structure under this Appendix shall be provided to CLEC on a basis that is nondiscriminatory to that which SBC-AMERITECH provides its Structure to itself, its Affiliates, Customers, or any other person.

16. INTERCONNECTION

- 16.1 Upon request by CLEC, SBC-AMERITECH will permit the interconnection of ducts or conduits owned by CLEC in SBC-AMERITECH manholes. However, such interconnection in SBC-AMERITECH manholes will not be permitted where modification of SBC-AMERITECH's Structure to accommodate CLEC's request for interconnection is possible.
- 16.2 Except where required herein, requests by CLEC for interconnection of CLEC for interconnection of CLEC's Attachments in or on SBC-AMERITECH Structure with the Attachments of other attaching parties in or on SBC-AMERITECH Structure will be considered on a case-by-case basis and permitted or denied based on the applicable standards set forth in this Appendix for reasons of Insufficient Capacity, safety, reliability and engineering. SBC-AMERITECH will provide a written response to CLEC's request within forty-five (45) days of SBC-AMERITECH's receipt of such request.

16.3 CLEC shall be responsible for the costs to accommodate any interconnection pursuant to this Section 16.

17. COST IMPUTATION

17.1 SBC-AMERITECH will impute costs consistent with the rules under Section 224 (g) of the Act.

18. STRUCTURE ACCESS CENTER

18.1 Request for access to SBC-AMERITECH Structure shall be made through SBC-AMERITECH's Structure Access Center, which shall be CLEC's single point of contact for all matters relating to CLEC's access to SBC-AMERITECH's Structure. The Structure Access Center shall be responsible for processing requests for access to SBC-AMERITECH's Structure, administration of the process of delivery of access to SBC-AMERITECH's Structure and for all other matters relating to access to SBC-AMERITECH's Structure.

19. STATE REGULATION

19.1 The terms and conditions in this Appendix shall be modified through negotiations between the Parties to comply with the regulation of the state in which SBC-AMERITECH owns or controls Structure to which CLEC seeks access if such state meets the requirements of Section 224 (c) of the Act for regulating rates, terms and conditions for pole attachments and so certifies to the FCC under Section 224 (c) of the Act and the applicable FCC rules pertaining thereto. Until the terms and conditions of this Appendix are renegotiated, the rules, regulations and orders of such state so certifying shall supersede any provisions herein inconsistent therewith.

20. ABANDONMENT, SALES, OR DISPOSITIONS

20.1 SBC-AMERITECH shall notify CLEC of the proposed abandonment, sale or other intended disposition of any Structure. In the event of a sale or other disposition of the conduit system or pole, SBC-AMERITECH shall condition the sale or other disposition to include and incorporate the rights granted to CLEC hereunder.

21. APPLICABILITY OF OTHER RATES, TERMS, AND CONDITIONS

21.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the

foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.